

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JORGE GEVARA,)	
)	
Petitioner,)	
)	
v.)	1:12CV373
)	
STATE OF NORTH CAROLINA,)	
)	
Respondent.)	

ORDER

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on May 21, 2012, was served on the parties in this action. In response, Plaintiff filed Petitioner's First Amended and Supplemental Alternative Writ of Habeas Corpus for Averment of Jurisdiction Under Petitioner's Unalienable Rights (Doc. 4), as well as a Memorandum of Law (Doc. 5) and an Affidavit (Doc. 6) in support of the same. Out of an abundance of caution, the court construes those filings as an objection to the Magistrate Judge's report.

The court has reviewed the portions of the Magistrate Judge's report to which objection was made and has made a *de novo* determination, which is in accord with the Magistrate Judge's report. None of Petitioner's most recent filings addresses the deficiencies

of the original Petition identified in the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that this action is construed as a habeas petition under 28 U.S.C. § 2254 and dismissed sua sponte without prejudice to Petitioner filing a new petition which corrects the defects cited in the Magistrate Judge's Recommendation. The new petition must be accompanied by either the five dollar filing fee or a current application to proceed *in forma pauperis*. A Judgment dismissing this action will be entered contemporaneously with this Order.

/s/ Thomas D. Schroeder
United States District Judge

June 27, 2012